IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.142 OF 2007

Mr.Jeevanlal R. Tank ...Applicant.

Versus

The State of Maharashtra
and 4 Ors. ...Respondents.

....

ALONG WITH

CRIMINAL APPLICATION NO.143 OF 2007

Mr.Jeevanlal R. Tank ...Applicant.

Versus

The State of Maharashtra
and 4 Ors. ...Respondents.

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Mr.M.N.Chopra, Adv. Advocate for the Applicant.
Mr.Rajesh More and Mrs.M.M.Deshmukh, APP for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 26th February, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant-orig.accused No.1 and the learned APP for the State.

2. In Criminal Application No.142 of 2007, one Mr.Syamdeo Ramsanmurat Yadav had filed a complaint against the present applicant and other accused persons being C.C.No.51/Misc./2005. In Criminal Application No.143 of 2007, one Dynanoba B. Suryawanshi had filed a complaint against the present applicant and other accused persons being C.C.No.342/Misc./2004. Both these complaints are under Sections 420 r/w. 34 of IPC. Both these complaints are pending before the learned M.M.,22nd Court, Andheri, Mumbai.

3. In the said cases, the learned Magistrate by order dated 14.9.2004 sent the complaints to Powai police station under Section 156(3) of Cr.P.C.. This order of the learned Magistrate is impugned in the present Applications.

4. The learned Advocate for the applicant has further submitted that the learned Magistrate ought not to have passed an order under section 156 (3) of Cr.P.C.. Being aggrieved by the order of learned Magistrate the applicant has preferred revisions being Cri.Revision Nos.835 of 2006 and 811 of 2006. The said revisions came to be

dismissed by the learned Sessions Judge by order dated 16.11.2006. Being aggrieved thereby, these applications have been preferred.

5. The learned Advocate for the applicant has contended that on perusal of the complaints, it does not make out any offence against the applicant. He has further submitted that the said complaints have been filed as counterblasts to the complaint filed by the applicant. He has further submitted that as far as the case in which the complainant is an accused, which complaint has been filed by the applicant, the High Court and other Courts while dealing with the bail applications and other applications have observed that there is *prima facie* case against the accused. Thus, he submitted that when it is a case of cross-complaint and when the Courts have observed that there is *prima facie* case against the accused, this shows that the complaints filed by that accused person against the applicant is false.

. As far as observations in relation to the complainant are concerned those are *prima facie* observations. Even though charge-sheet may have

been filed in those cases that does not mean that order under section 156(3) Cr.P.C. deserves to be quashed. As the matter is at the investigation stage, in my opinion, the investigating agency ought to be given a reasonable opportunity to investigate.

6. The Division Bench of this Court in the case of **B.S.Khatri and Ors. Vs. State of Maharashtra and Anr., 2004(1) Bom.C.R.424**, has observed in Para-22 that it is not open for the Court to decide as to whether the averments in the complaint are reliable or genuine, and whether cognizance is liable to be taken or not. It is the exclusive jurisdiction of the Magistrate trying the offence and not the High Court to decide at such premature stage.

7. Besides this, in my view, the applications are premature. There is no need to interfere at this stage as all that has been done by the learned Magistrate is to pass an order under Section 156(3) of Cr.P.C.. The report that the police may file as a consequence of the order under section 156(3) Cr.P.C. may disclose no offence in such case the Magistrate may drop the

complaint.

8. In this view of the matter, the quashing of the order at this stage would be unwarranted and premature. In case the report discloses possible commission of any offence, the Magistrate may decide to take cognizance of the matter and issue process. Against the order of the Magistrate issuing process the applicant has an efficacious remedy.

9. Thus, in view of the decision of Division Bench of this Court in the case of **B.S.Khatri** (supra), I do not see any merit in the present Applications. Hence, Criminal Applications are rejected.

10. In case the investigating agency is of the opinion that custody of the applicant is required, in such case the investigating agency shall give 72 hours notice to the applicant prior to his arrest. In case such notice is received by the applicant, the applicant to prefer necessary application before the concerned Sessions Court. Needless to say that if such an application is preferred the concerned Sessions Court shall

dispose of the said application on merits.

(SMT.V.K.TAHILRAMANI,J.)